

The 18th November, 1986

No. 9/8,86-6Lab/9318.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Auto Glide Pvt. Ltd., Plot No. 64, Sector 6, Faridabad:—

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 135 of 1985

between

SHRI BAHADUR SINGH, WORKMAN C O BHARTIYA MAZDOOR SANGH, VISHAY-
KARAMA BHAWAN, FARIDABAD AND THE RESPONDENT-MANAGEMENT OF
M/S AUTO GLIDE PVT. LTD., PLOT NO. 64 SECTOR 6, FARIDABAD

Present:

Shri B. S. Bhati for the workman.

Shri R. C. Sharma for the respondent.

AWARD

This reference under section 10(i)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—vide its endorsement No. ID/FD/2-85/9447—52, dated the 12th March, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Bahadur Singh, workman and the respondent-management of M/s. Auto Glide Pvt. Ltd., Plot No. 64, Sector 6, Faridabad. Accordingly, it has been registered as reference No. 135 of 1985.

2. The claim of Shri Bahadur Singh has been that he was appointed by the respondent on 28th June, 1983 as helper at monthly pay of Rs. 385 and on the same day one E.S.I. card was issued to him and all of a sudden on 12th August, 1984 he had become sick and due to that he could not attend to his duties until 30th October, 1984 and on getting medical fitness certificate he had reported on duty on 31st October, 1984 but he was not allowed to resume his duties and even thereafter also. The allegations are that his services have been dispensed with without adopting prescribed procedure and in violation of principles of natural justice. accordingly request has been made for reinstatement into his job with full back wages and further with continuity in service.

3. On notice, the respondent appeared and filed written statement contesting the said claim. It has been pointed out that Bahadur Singh was appointed only on 7th December, 1983 and his services were terminated on 11th October, 1984. According to the terms and condition of the appointment letter. Further it is claimed that he was working purely on temporary basis and as such order of termination was quite justified and proper also. On replication the claim as well as allegations have been repeated.

4. On the pleadings of the parties my learned predecessor had framed the following issues on 25th July, 1985:—

Whether termination of services of Shri Bahadur Singh is justified? If not, what relief he is entitled?

Factory Manager Shri Som Nath Grover has appeared as MW-1 and deposed about factual position of service matter. On the other hand there are statements of Bahadur Singh, workman and one Raj Pal also. I have heard both the parties as represented above. I have gone through the case file also. My findings is as below:—

Issue No. 1 :

5. Bahadur Singh had made as mentioned in his demand notice dated the 11th November, 1984 that he was employed as a helper on 28th June, 1983 and 12th October, 1984. He had become sick and had reported on duty on 31st October, 1984 but he was not allowed to do so. He has repeated in—vide his claim statement. However, on the other hand the claim of the respondent is that he was appointed only on 7th December, 1983 and his services were terminated on 11th October, 1984 as per terms and condition of appointment letter. At this stage the serious dispute arises about the date of appointment. On one hand according to Bahadur Singh, it is 28th June, 1983 while on the other hand according to the respondent it is 7th December, 1983. Notwithstanding the above it is the respondent who has come forward to state on oath that

he was appointed on 28th June, 1983 and he had left his job on 11th November, 1984. It has also been admitted by the respondent that his B.S.I. Card was issued on 28th June, 1983. It is a matter of regret that the respondent has not come forward with clean hands as material facts were concealed in this case. It has been mentioned by it in the Written Statement that he was appointed on 7th December, 1983 and this date had already been repeated by it in the comments filed in reply to the demand notice of this workman and thereafter good sense had prevailed upon it and then only Shri Som Nath Grover, its manager, has stated on oath that he was appointed on 28th June, 1983. In this manner I have no hesitation in adopting 28th June, 1983 as the date of his appointment. The contention of respondent that he was appointed only on 7th December, 1983 stands falsified. Further contention of the respondent is that his services were dispensed with on 11th November, 1983 and it has been denied by the workman and there is no reason to dis-believe his statement to that effect. It means that he had not left his job on 11th November, 1983 as alleged by the respondent. The serious contention of the respondent is that the workman was appointed on 7th December, 1983,—vide Exhibit M-1. There is no dispute that Shri Bahadur Singh has admitted his signatures on the said application form and acceptance thereof but that does not mean that he was not already working. On behalf of the workman it has been contended that he had become sick as per chance and medical certificate was obtained and delivered to the respondent and he was not allowed to resume his duty on 31st October, 1984. This contention may and may not be correct but it is immaterial since it has been admitted by the respondent that services of workman were terminated on 11th October, 1984. If the matter has been taken up according to the data supplied by the respondent, the period of his service exceeds more than 240 days and on the face of it he is entitled for the benefit of continuous service as defined in Section 25-B of the said Act. On behalf of the respondent it has been contended that he was a temporary hand and his services were terminated according to the terms and conditions of appointment letter Exhibit M-1. On the other hand it has been contended that this workman could not be ousted from the job as he was in continuous service of more than one year. In this respect reliance has been placed on 1985 (2) Epitomised Legal Judgement (Labour and Services page 163 ————— that was a case of monthly rated casual labour. Initially they were employed as casual labourer as pointed out above. It was held that they were entitled for the benefit of continuous service and their services could not be terminated as it was contrary to Section 25-F of the said Act. This ruling is applicable on the facts of the present case. No notice was issued to the workman to terminate his service and in lieu thereof one month pay was not issued to him. Over and above no compensation was offered to him. The respondent had acted in violation of Section 25-F of the said Act and as such its act in terminating the services is bad in law and as such that is accordingly quashed. In consequence Shri Bahadur Singh is reinstated with full back wages and with continuity of service.

The award is passed accordingly.

Dated 24th September, 1986.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endst. No. 2399, dated the 9th October, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of Industrial Disputes Act, 1947.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

No. 9/9/86-Lab/9373.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Maneesh Wire Industries, Plot No. 215, Sector 24, Faridabad :—

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference Nos. 527, 528, 529, 530, 531, 532, 533, 534 and 536 of 1983

between

SARVSHRI SHANKAR PARSHAD, MOHAMMAD AJOOB, RAJENDRA PARSHAD,
CHANDESHWAR PARSHAD, CHATURI SINGH, BHARAT YADAV, RANJIT PARSHAD
GUPTA, BALI RAM SINGH AND HARI NATH YADAV, C/O AITUC NEAR SYNDICATE
BANK N. I. T., FARIDABAD AND THE MANAGEMENT OF M/S. MANEESH WIRE IN-
DUSTRIES, PLOT NO. 215, SECTOR 24, FARIDABAD.

Present:—

Shri Darshan Singh for the workmen.
Shri H. R. Dua for the management.

AWARD

This award would dispose of nine consolidated references bearing (1) No. 527/83 Shankar Parshad, (2) 528/83 Mohammad Ajoob, (3) 529/83 Rajendra Parshad, (4) 530/83 Chandeshwar Parshad, (5) 531/83 Chaturi Singh, (6) 532/83 Bharat Yadav, (7) 533/83 Ranjit Parshad Gupta, (8) 534/83, Bali Ram Singh, (9) 536/83, Hari Nath Yadav, *versus* Maneesh Wire Industries, Plot No. 215, Sector 24, Faridabad and main proceedings have been held in reference No. 527/83 (Shankar Parshad *versus* Maneesh Wire Industries, Plot No. 215, Sector 24, Faridabad).

2. In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the dispute between Shankar Parshad, Mohammad Ajoob, Rajendra Parshad, Chandeshwar Parshad, Chaturi Singh, Bharat Yadav, Ranjit Parshad Gupta, Bali Ram Singh and Hari Nath Yadav and the management of M/s. Maneesh Wire Industries, Plot No. 215, Sector 24, Faridabad for adjudication regarding termination of their services.

3. Notices were issued to both the parties. Parties appeared. The case of the petitioners is that they were permanent workmen with M/s. Maneesh Wire Industries and that their services were illegally terminated with effect from 8th February, 1983 and they were not allowed to join duty. They pleaded that they were not given any notice pay or retrenchment compensation and that the Management had started a new factory within the radius of 5 K. M. and have recruited new hands in their new concern. They alleged that the Management wanted to get rid of all the workmen to break their Union and such action on the part of the Management was the case of the clear victimisation and unfair labour practice. They prayed for reinstatement with all back wages.

4. The respondent-management controverted the pleas of the workmen in the written statement filed by the respondent-management. The case of the Management is that the workmen were retrenched as they were found surplus and that the claimants were offered retrenchment compensation and notice pay, but they did not accept the amount offered to them and thereafter the amount of compensation payable under the Industrial Disputes Act, 1947 was remitted to them by money order and order of retrenchment was sent by registered cover, but the same were also refused by the workmen. The Management denied having recruited new hands and also denied that they have shifted their business and started new factory. Hence it was pleaded that the workmen having been validly retrenched were not entitled to any relief.

4. On the pleadings of the parties the following issues were settled by Shri R. N. Batra, the then Presiding Officer, Industrial Tribunal, Haryana, Faridabad :—

(1) Whether the claimants were validly retrenched as pleaded ? OPM

(2) Whether the termination of service of the claimants was justified and in order ? If not, to what relief are they entitled to ?

All the cases were consolidated as these involved determination of similar question of law and facts. The main proceedings were held in reference No. 527/1983 (Shankar Parshad *Vs* M/s Maneesh Wire Industries, Plot No. 215, Sector 24, Faridabad).

5. It may be mentioned that after settlement of issues when the cases were fixed for evidence of the Management. Both the parties did not appear and *ex parte* award was passed against the workmen on 17th July 1985 by Shri R.N. Batra the then Presiding Officer, Industrial Tribunal, Haryana, Faridabad. Later on, on the application of the workmen, the *ex parte* award was set aside on 4th March, 1986 by my predecessor. The Management examined Shri Brij Mohan MW-1 Partner of the respondent factory and Shri Rama Nand MW-2 and they also produced on record Ex. M-1 to M-58. On contrary, the workmen examined Shri Shiv Shanker WW-1 and Bali Ram Singh as WW-2 claimants. I have heard Shri H. R. Dua, learned authorised representative for the Management and Shri Darshan Singh learned authorised representative for the workmen and perused the record carefully. My findings on the aforesaid issues are as under :

Issue No. 1.—

6. Brij Mohan MW-1 partner of the respondent factory stated that 14 employees were retrenched by the Management out of whom 7 employees have settled their claims by accepting the amount in full and final settlement of their claims. He also stated that prior to retrenchment the lay off was imposed during the month of January and February, 1983 due to power cut and less orders. Before retrenchment seniority list Ex. M-1 was displayed on the notice board. No objection was filed against the seniority list. Copy of the seniority list was also sent to the Labour Commissioner, Haryana with covering letter Ex. M-2. Ex. M-3 to M-6 are the notices regarding lay off of the workers and those were sent to the Labour Commissioner, Haryana by U.P.C. copies Ex. M-7 and M-8. Thereafter the workmen were retrenched and the letters Ex. M-9 to M-22 were sent to the retrenched workmen. The workmen refused to receive these letters and amount offered to them. Thereafter the amount was remitted to the workmen by money order,—*vide* photostat copies of the receipt Ex. M-23 to M-36. The letters were also sent to the workmen by registered post and Ex. M-37 to M-47 are the postal receipts. Shri Brij Mohan also deposed that notice as required under form 'P' was also sent to the Secretary to Government, Haryana, Labour Department when the retrenchment was effected and the copy of the notice is Ex. M-48. He also produced on the record Ex. M-49 relating to the Conciliation proceedings on the demand notices submitted by the workmen. He also testified that there had been no improvement in position of the factory and that no new hands had been recruited in place of the retrenched workmen. He also stated that the money remitted to the workmen was received back as undelivered.

7. Rama Nand MW-2 Accountant in the factory deposed that dues were offered to the retrenched workmen by him but they refused to receive the same and thereafter the letters were despatched to them by registered covers and the same were received back undelivered. Those letters are Ex. M-50 to M-58.

8. On the contrary Shiv Shanker WW-1 deposed that his services were terminated on 7th February, 1983 as he was demanding regular pay scale. He stated that no notice pay or compensation was given to him. Four persons who were Junior to him are still in service and the respondent has started a new factory in village Dhoj. In cross-examination he admitted that his address given on the envelop Ex. M-55 is correct and that the Management asked them to receive the amount in full and final settlement of their claim, but they refused to accept the same.

9. Shri Bali Ram Singh WW-2 stated that his services were terminated on 8th February, 1983 without paying compensation or notice pay. He denied having received any letter. He stated that persons junior to him namely Sham Sunder, Hira Lal, Jai Pal Singh were retained while his services were terminated.

10. From perusal of the evidence led by both the sides, it is clear that 14 workmen including the claimants were retrenched with effect from 8th February, 1983. It cannot also be disputed that prior to the retrenchment the Management imposed lay off as there was power cut and less orders for supply of the material. Thus the Management was not in a position to provide work to all the workmen and retrenchment was effected as the workmen were found surplus. It is also in evidence that prior to effecting retrenchment, the seniority list Ex. M-1 was prepared as required under Rule 76 of the Industrial Disputes (Punjab) Rules, 1958. It is also amply established that notices as required under Section 25-F(c) of the Act were also sent to the Government regarding retrenchment. The copy of the notice is Ex. M-48 and this notice was sent on 'P' form as prescribed under rule 75 of the Industrial Disputes (Punjab) Rules, 1958.

11. It is also amply established from the testimony of MW-1 Brij Mohan and MW-2 Rama Nand MW-2 that one month notice pay in lieu of notice and retrenchment compensation was offered to the workmen but they refused to receive the same. Thereafter the letters of retrenchment were despatched to the workmen by registered post and the amount of compensation was remitted by money order, but the workmen again refused to receive the same.

12. Thus it is apparent that all the conditions precedent to the retrenchment of the workmen as stipulated in Section 25-F of the Act were duly complied with by the Management in as much as the Management has sent intimation to the Government and also offered one month notice pay and retrenchment compensation to the workmen. The workmen who refused to receive the compensation cannot contend the non-compliance of the provisions by the Management. It is worthwhile to note that WW-1 Shiv Shankar workman has categorically admitted that the Management has asked them to receive the amount in question but they refused to do so. Thus the remission of amount by money order was sufficient compliance of the provision of Section 25-F of the Act as held in case of **Management of Ramesh Hydromachs and Labour Court, Hubli and another, 1986-IL.L.J. page 334 and M/s Marikar (Motors) Ltd., Trivendrum and others vs. State of Kerala and Others, 1986 Lab. I.C. page 1213.**

13. Shri Darshan Singh learned Authorised Representative of the workmen contended that the Management did not send the amount at the native address of the workmen and that persons junior to claimants were retained and as such the retrenchment orders are bad. His submissions are without any merit. It is admitted by one of the workmen Shri Shiv Shankar that the amount of compensation was offered to them by the Management but the workmen refused to receive the same. After retrenchment, the workmen were residing at Faridabad and thus there was no question of remitting the amount by money order to them at their native home address. The Management did not commit any irregularity when it remitted the amount to the workmen at their known address of Faridabad where they were residing at the relevant time. It is also admitted by Bali Ram Singh WW-2 that the seniority list Ex. M-1 was displayed by the Management. The Authorised Representative of the workmen could not point out that persons junior to Bali Ram had been retained. The action of the Management in ordering retrenchment of the workmen is in quite consonance with the provisions of law and no fault can be found with it. Accordingly it is held that the claimants have been validly retrenched by the Management. The issue is answered in favour of the Management.

Issue No. 2.—

14. Termination —of services by the employer of the workman for any reason whatsoever comes within the definition of retrenchment as per Section 2(oo) of the Act. Since there was valid retrenchment, the termination of services must be held to be justified and in order.

15. In view of the foregoing discussion, the claimants are not entitled to any relief as they have been validly retrenched. The award is passed accordingly.

Dated 24th September, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 637, dated 30th September, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

S.B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.